

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34246

STATE OF IDAHO,)	2008 Unpublished Opinion No. 705
)	
Plaintiff-Respondent,)	Filed: November 13, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
ERIC J. KNAPP,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Shoshone County. Hon. Fred M. Gibler, District Judge.

Order granting I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sarah E. Tompkins, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Eric J. Knapp pled guilty to statutory rape. I.C. § 18-6101(1). The district court sentenced Knapp to a unified term of nine and one-half years, with a minimum period of confinement of one and one-half years. Knapp filed an I.C.R. 35 motion, which the district court granted by reducing Fox's sentence to a unified term of six and one-half years, with a minimum period of confinement of one and one-half years. Knapp appeals.

A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Since the district court later modified Knapp's sentence, pursuant to his Rule 35 motion, we will only review Knapp's modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992). Knapp has the burden of showing a clear abuse of discretion on the part of the district court in failing to further reduce the sentence on Knapp's Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Knapp has failed to show such an abuse of discretion.

Upon review of the record, including the new information submitted with Knapp's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order granting Knapp's Rule 35 motion is affirmed.